

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 08-53411

VALENTIN F. CICIOVEAN, and
JANETTE O. CICIOVEAN,

Chapter 11

Judge Thomas J. Tucker

Debtors.

ORDER DISMISSING CASE

On June 2, 2008, Debtors filed a voluntary petition for relief under Chapter 13, initiating this case. On June 17, 2008, Debtors filed a motion to convert the Chapter 13 case to Chapter 11. On July 28, 2008, the Court granted the Debtors' conversion motion, and the case was converted to Chapter 11.

On November 25, 2008, the Court entered an "Order to Show Cause Why This Chapter 11 Case Should Not be Dismissed or Converted to Chapter 7" (Docket # 75). The November 25, 2008 Show-Cause Order provided, in relevant part:

Beginning more than a month ago, with its Order filed October 20, 2008 (Docket # 52), the Court has previously given the Debtors three separate opportunities to correct all of the many deficiencies in their combined plan and disclosure statement, and Debtors have still failed to do so. Accordingly,

IT IS ORDERED that the Debtors appear on **December 3, 2008 at 11:00 a.m.** in Room 1925, 211 W. Fort Street, Detroit, Michigan, and show cause why this Chapter 11 case should not be dismissed or converted under 11 U.S.C. §§ 1112(b) and 105(a).

(Footnote omitted; bold in original).

On December 3, 2008, the Court held a hearing on its November 25, 2008 Show-Cause Order. During the hearing, Debtors' attorney stated that she intended to file a motion to convert the case from Chapter 11 to Chapter 7. The Court gave Debtor's attorney one week to do that.

Also during the hearing, the Court emphasized that Debtors must file and serve a **20-day notice** of their motion to convert, not a 15-day notice.

The Court then entered its “Order Conditionally Dissolving Show Cause Order” (Docket # 87), on December 3, 2008. The Show-Cause Order provided, in relevant part:

IT IS ORDERED that the Court’s November 25, 2008 Show-Cause Order (Docket # 75) is dissolved, on the following condition. Debtors must file and serve (1) a motion to convert this Chapter 11 case to Chapter 7, and (2) *a 20-day notice of the motion to convert*, no later than **December 10, 2008**.

IT IS FURTHER ORDERED that *if Debtors fail to satisfy the above condition by the deadline, this case may be dismissed without further notice or hearing*.

(Footnote omitted; bold in original; bold italics added).

On December 10, 2008, Debtors filed a motion to convert this Chapter 11 case to Chapter 7 and a **15-day** notice of the motion to convert. (Docket # 88.) Because Debtors have not satisfied the conditions in the December 3 “Order Conditionally Dissolving Show Cause Order,”¹

IT IS ORDERED that this bankruptcy case is DISMISSED. This dismissal is not with prejudice or with any bar to Debtors filing a new bankruptcy case, under Chapter 7.

¹ Not only is the 15 day notice inadequate because a 20-day notice was required, but also there is a mistake in the 15-day notice that is potentially confusing to recipients of the notice. While the first paragraph of the notice refers to the Debtors having filed a motion to convert, the third paragraph of the notice refers to an entirely different motion by a different Debtor: “If you do not want the court to allow Debtors’ Motion to Excuse Debtor, Steven Trevino, from attendance at 341hearing, or want the court to consider your views on the motion, then within 15 days, you or your attorney must: 1. File with the court a written response to the Motion, explaining your position[.]” (Docket # 88.)

Signed on December 11, 2008

/s/ Thomas J. Tucker

Thomas J. Tucker

United States Bankruptcy Judge